



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

June 29, 2009

CBCA 1445-RELO

In the Matter of DARIO LUGO III

Dario Lugo III, Springfield, VA, Claimant.

Debra J. Murray, Chief, Travel Section, National Finance Center, U.S. Customs and Border Protection, Department of Homeland Security, Indianapolis, IN, appearing for Department of Homeland Security.

SOMERS, Board Judge.

Background

In 1990, claimant, Dario Lugo III, worked as a border patrol agent with the Department of Homeland Security, U.S. Customs and Border Protection, in Freer, Texas. Mr. Lugo discovered that the agency had issued a vacancy announcement for a position as an immigration inspector in Vancouver, Canada. Mr. Lugo applied for the position, not dissuaded by the fact that the position was at a lower grade than his current position. The agency selected Mr. Lugo for the position, and Mr. Lugo accepted the offer. In accordance with his transfer orders, he moved to Canada in May 1990, paying for his own travel and transportation expenses. Mr. Lugo did not sign a service agreement in connection with this move. In May 2001, Mr. Lugo relocated at government expense from Vancouver, Canada, to Victoria, Canada.

In 2006, the agency transferred Mr. Lugo from Victoria, Canada, to Washington, D.C. Mr. Lugo's orders expressly indicated that he would not be entitled to reimbursement for real estate transaction expenses. Even though Mr. Lugo's orders did not allow reimbursement for real estate transaction expenses, Mr. Lugo submitted a claim for reimbursement for costs incurred when he purchased his residence at his new permanent duty station.

The agency declined to reimburse Mr. Lugo. In rejecting his claim, the agency explained that because the position that Mr. Lugo took in Canada expressly required him to pay for his own travel and relocation expenses, the agency could not reimburse him for residential transaction expenses for his move back to the United States. Mr. Lugo has asked the Board to review this decision.

Discussion

Under 41 CFR 302-11.2, an employee is eligible to receive an allowance for expenses incurred in connection with residence transactions if the employee has signed a service agreement, and, per the regulation:

(b) the employee transferred from an official station in the United States to a foreign area, and is now transferring back to the United States;

(1) the employee has completed his service agreement time period for his overseas tour of duty; and

(2) the employee is assigned to an official station in the United States that is more than 50 miles from his last official station in the United States.

41 CFR 302-11.2 (2005). The employee must sign a service agreement before receiving residence transaction allowances. 41 CFR 302-11.3.

In this case, Mr. Lugo did not sign a service agreement prior to moving to his initial posting in Canada. Accordingly, under the applicable regulations, he is not entitled to be reimbursed for his real estate expenses.

For this reason, the claim is denied.

JERI KAYLENE SOMERS
Board Judge